

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

RECEIVED
MAR 02 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	WT Docket No. 98-100
Interconnection and Resale Obligations)	
Pertaining to)	CC Docket No. <u>94-54</u>
Commercial Mobile Radio Services)	

**OPPOSITION OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION
TO MCI WORLDCom's PETITION FOR FURTHER RECONSIDERATION**

Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President for Regulatory Policy & Law

**CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 785-0081

Its Attorneys

March 2, 2000

TABLE OF CONTENTS

	Page
I. Introduction and Summary.....	1
II. The Growth In Wireless Facilities-Based Competition Ensures That Consumers Will Not Be Adversely Affected By The Sunset Of The Mandatory Wireless Resale Requirement.	2
III. The Commission Should Reject MCI WorldCom's Request To Join The Wholly Unrelated Policies Of Wireless Local Number Portability And The Sunset Of The Mandatory Wireless Resale Requirement.	4
A. The Resale Sunset Date And The Wireless Local Number Portability Deadline Share The Same Date, But For Different Reasons.	4
B. MCI WorldCom Inappropriately Seeks To Address Wireless Number Portability In The Commission's Wireless Resale Docket.	5
IV. The Commission Already Has Considered And Rejected MCI WorldCom's Alarmist Predictions Concerning The Effect Of Terminating Wireless CPE Resale Obligations.	6
V. Conclusion.....	9

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
)	WT Docket No. 98-100
Interconnection and Resale Obligations)	
Pertaining to)	CC Docket No. 94-54
Commercial Mobile Radio Services)	

**OPPOSITION OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION
TO MCI WORLDCom's PETITION FOR FURTHER RECONSIDERATION**

The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its Opposition to MCI WorldCom's Petition for Further Reconsideration in the above-captioned proceeding.²

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including 49 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, WT Docket No. 98-100, CC Docket No. 94-54, *MCI WorldCom Petition for Further Reconsideration* (filed Dec. 9, 1999) ("Further Reconsideration Petition" or "Petition").

I. INTRODUCTION AND SUMMARY

In its Petition, MCI WorldCom ("MCIW") requests an extension of the mandatory resale rule sunset date from November 24, 2002 to November 24, 2003 or, alternatively, an extension of the sunset date to at least one full year after the successful completion of wireless local number portability ("LNP"). It also requests that the Commission reimpose mandatory resale of CPE and network features for E911 for CMRS providers.

The Commission has previously considered and resolved the issues raised by MCIW's Petition. Moreover, MCIW seeks to construct a connection between wireless resale and wireless LNP that fails logically and lacks an historic foundation in the Commission proceedings addressing those issues. Finally, MCIW fails to recognize that, through its rules, the Commission already has considered and rejected as unlikely the E911 quandaries that MCIW maintains are an extension of the elimination of CPE resale obligations. For these reasons, the Commission should reject MCIW's Petition.

II. THE GROWTH IN WIRELESS FACILITIES-BASED COMPETITION ENSURES THAT CONSUMERS WILL NOT BE ADVERSELY AFFECTED BY THE SUNSET OF THE MANDATORY WIRELESS RESALE REQUIREMENT.

Termination of the mandatory resale rule will not adversely affect wireless customers. As a preliminary matter, it is important to note that the elimination of the mandatory resale rule does not necessarily portend the end of wireless resale. As long as wireless resellers can attract customers to their offerings, there is no reason to doubt that some or all facilities-based wireless carriers will continue to offer resale of their services.³ Consequently, it cannot be assumed that customers of wireless resellers will have to switch providers upon termination of the rule.⁴

³ The Sixth Circuit explains that "[t]he FCC did not adopt its resale policy for the purpose of ensuring the availability of resale. It adopted the policy as a means to achieve

Nevertheless, even if resale opportunities cease to exist, the Commission has already determined that by the sunset date, "it is reasonable to anticipate that there will be up to six facilities-based broadband PCS carriers, as well as potentially one or more covered SMR providers, competing with two cellular licensees in every geographic area."⁵ In its *Memorandum Opinion and Order on Reconsideration*, the Commission affirmed its decision to terminate the resale rule at the end of the sunset period, noting its earlier statement that "the competitive development of broadband PCS service will obviate the need for a resale rule in the cellular and broadband PCS market sector."⁶ The Commission's mandatory wireless resale rule was adopted

competition." Cellnet Communications, Inc. v. F.C.C., 149 F.3d 429, 441 (6th Cir. 1998). Nevertheless, the court also notes that by the sunset date of the mandatory resale rule, "the FCC expects that cellular carriers will not possess sufficient market power . . . to enable them to impose unreasonable restrictions on resale and stifle the competition of resellers." Id. at 442.

⁴ Moreover, resale is provided pursuant to contracts that bind the facilities-based carrier and its resellers to specific terms, including the term of the contract. Accordingly, it is the expiration of the existing contracts, not the termination date of the rule, that is relevant.

⁵ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *First Report and Order*, 11 FCC Rcd 18455 at ¶ 24 (1996)("Resale First R&O").

⁶ See Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services; Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services; Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers; Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Services, CC Docket No. 94-54; WT Docket No. 98-100; GN Docket No. 94-33, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 16340 at ¶ 21 (1999)("Memorandum Opinion and Order on Reconsideration"). As the Sixth Circuit noted, the "FCC's judgment is a predictive one ...[and] it is well-established that under the arbitrary and capricious standard of review, an agency's predictive judgments about areas that are within the agency's field of discretion and expertise are entitled to particularly deferential review." Cellnet Communications, 149 F.3d at 441.

to generate competition for the benefit of wireless consumers, not wireless resellers.⁷ The decision to sunset the rule is consistent with that policy objective. The large number of facilities-based wireless carriers offering service over independent networks promises broad choice for consumers and ensures that competition for customers will be vigorous. Regardless from whom they take service (whether they choose to take service from wireless resellers or from wireless facilities-based carriers), customers will enjoy the benefits of this competition in terms of low rates, creative rate structures, flexible plans, and responsive service. In short, customers will not want for wireless service options and will not confront the absence of fiercely competitive carriers seeking to win their business.

III. THE COMMISSION SHOULD REJECT MCI WORLDCom's REQUEST TO JOIN THE WHOLLY UNRELATED POLICIES OF WIRELESS LOCAL NUMBER PORTABILITY AND THE SUNSET OF THE MANDATORY WIRELESS RESALE REQUIREMENT.

A. The Resale Sunset Date And The Wireless Local Number Portability Deadline Share The Same Date, But For Different Reasons.

MCIW seeks to tie implementation of wireless LNP to the resale sunset rule, alleging that "[w]ithout LNP, any wireless carrier choosing to terminate its resale arrangements could potentially strand wireless resale customers."⁸ In truth, the sunset of the mandatory wireless

⁷ In the wireline context, the Commission concluded that resale would benefit the public by driving services toward cost-based rates, promoting the efficient utilization of communications capacity and better management of communications networks, and encouraging the development and implementation of new technology. See Resale and Shared Use of Common Carrier Services and Facilities, Docket No. 20097, *Report and Order*, 60 FCC2d 261, 298-303 (1976). In applying such requirements in the wireless environment, the Commission reaffirmed its earlier public interest focus. See An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems, CC Docket No. 79-318, 86 FCC2d 469 at ¶ 105 (1981); see also Cellnet Communications, 149 F.3d at 441.

⁸ Further Reconsideration Petition at 2.

resale rule and the wireless LNP deadline have no independent relationship. The sunset of the wireless mandatory resale rule is tied to the date by which the most recent PCS licensees must have completed substantial build-out of their independent networks.⁹ As noted above, by that time, the Commission expects that facilities-based wireless competition will be sufficiently vigorous that a mandatory resale rule will no longer be necessary. The wireless LNP deadline is also tied to the PCS five-year build-out period.¹⁰ The Commission concluded that the more accelerated mandatory wireless LNP schedule had the potential to divert available financial and technical resources from other initiatives that could have a more immediate impact on competition -- such as investment in build-out.¹¹ The trigger dates for wireless LNP and resale sunset are the same, but the commonality ends there. The policies underlying the identical dates are of wholly different origins. MCIW fails to recognize this distinction.

B. MCI WorldCom Inappropriately Seeks To Address Wireless Number Portability In The Commission's Wireless Resale Docket.

MCIW's true intentions appear to lie with ensuring the effective and timely implementation of wireless LNP -- a matter which the Commission is addressing in another proceeding. MCIW

⁹ Resale First R&O at ¶ 24.

¹⁰ Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations; and Telephone Number Portability, WT Docket No. 98-229; CC Docket No. 95-116, *Memorandum Opinion and Order*, 14 FCC Rcd 3092 at ¶ 39 (1999)("We similarly regard November 24, 2002 as a reasonable date for LNP purposes because it marks the point when all but a small percentage of PCS licensees in the top 100 MSAs will have completed their five-year buildout. Thus, use of this date ensures that the vast majority of CMRS carriers subject to LNP requirements will have achieved substantial buildout in these markets while also ensuring that LNP implementation occurs within a reasonable timeframe.").

¹¹ Id. at ¶ 38.

proposes a burdensome program of frequent, detailed reporting requirements, interim deadlines, and testing demonstrations that have nothing to do with resale, and which the Commission has just rejected.¹² MCIW seeks assurances that CMRS providers will adhere to the Commission's LNP schedule.

Regardless of the relevant substantive considerations, these issues are more appropriately addressed in the Commission proceeding devoted to wireless LNP. Indeed, they have been addressed. MCIW raised the effect of Calling Party Pays, numbering exhaust, and other issues in the Commission's wireless LNP proceeding and the Commission is considering MCIW's concerns in that forum.¹³ In its *Petition for Further Reconsideration* in the instant docket, MCIW fails to raise new issues or information to justify a change in the Commission's resale rules. Indeed, MCIW's LNP discussion is wholly inapposite to the sunset of the mandatory wireless resale rule and is not appropriately considered in this docket. Therefore, the Commission should deny MCIW's Petition.

IV. THE COMMISSION ALREADY HAS CONSIDERED AND REJECTED MCI WORLDCom's ALARMIST PREDICTIONS CONCERNING THE EFFECT OF TERMINATING WIRELESS CPE RESALE OBLIGATIONS.

MCIW's Petition also asks the Commission to maintain mandatory resale of CPE and network features of E911. CTIA and its members are proud of the safety benefits uniquely offered by wireless mobile telephony and are fully committed to ensuring that the availability of

¹² See *id.* at ¶ 42.

¹³ See Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability, WT Docket No. 98-229; CC Docket No. 95-116, *MCI WorldCom Petition for Reconsideration* (filed May 27, 1999).

E911 benefits to consumers is not jeopardized. MCIW erroneously claims that if CPE resale is no longer required, "resellers' customers face either being disadvantaged by having to wait longer for enhanced handsets or burdened by the need to switch to a facilities-based carrier to obtain the handset earlier."¹⁴

The scope of MCIW's unfounded concerns must first be made clear. Specifically, they apply only to those customers subscribed to a reseller whose underlying carrier utilizes a GPS solution. This group of wireless customers may prove to be a very narrow subgroup of wireless customers as a whole, and not large enough to justify wholesale reinstatement of the CPE resale obligations.¹⁵

Facilities-based carriers and resellers alike must rely on market-based negotiations with vendors -- rather than Commission-imposed requirements -- to provide their customers with CPE. In the *Memorandum Opinion and Order on Reconsideration*, the Commission considered precisely the issue that MCIW raises in its Petition. It noted the absence of "evidence that resellers are prevented from obtaining CPE from sources other than CMRS carriers or from negotiating with equipment manufacturers for discounted prices."¹⁶ In this regard, a reseller is no

¹⁴ Petition for Further Reconsideration at 5.

¹⁵ This concern may also be remote as regards to time, as well. Nokia and Motorola have submitted to the Commission a Petition for Reconsideration seeking an extension of the deadline for instituting handset-based E911 solutions. See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Petition for Reconsideration of Nokia, Inc. and Motorola, Inc.* (filed Dec. 6, 1999).

¹⁶ Memorandum Opinion and Order on Reconsideration at ¶ 29. The Commission also noted that "[s]maller resellers have alternatives to obtain CPE volume discounts comparable to those available to large resellers and facilities-based carriers. For example, firms in other industries have formed buying consortia." Id.

different than a facilities-based carrier with the same number of customers. Indeed, customer reliance on carrier agreements with vendors may not be necessary at all. As the Commission is well aware, the wireless CPE market is vigorously competitive and handsets are widely available for purchase from a variety of retail outlets that are not affiliated with facilities-based CMRS providers. Given the competitive nature of the CPE market and the natural market interests of manufacturers to maximize their revenues, one can expect that market-driven incentives will ensure that adequate supplies of CPE with handset-based E911 solutions will be widely available for customers of wireless resellers from both those resellers and non-carrier outlets. Moreover, the Commission has established an ambitious plan for phasing-in ALI-capable handsets that seeks to accommodate all choices in E911 technologies (handset-based and network-based) and to avoid granting preferential treatment to a carrier based upon whether it retains a single-source supplier or has opted for multi-source suppliers.¹⁷ There is no reason to accept MCIW's alarmist projections of the future nor to adopt rules that "discourage marketing strategies that reduce costs to consumers."¹⁸

¹⁷ See generally Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, *Third Report and Order*, FCC 99-245 at ¶ 45 (rel. Oct. 6, 1999) ("E911 Third R&O").

¹⁸ Id.

V. CONCLUSION

For the foregoing reasons, CTIA respectfully urges the Commission to deny MCI WorldCom's Petition for Further Reconsideration in the above-captioned docket.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**

Michael F. Altschul ^{9DH}

Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President for Regulatory Policy & Law

1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 785-0081

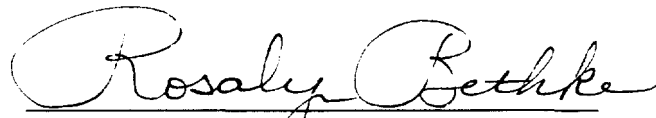
Its Attorneys

March 2, 2000

CERTIFICATE OF SERVICE

I, Rosalyn Bethke, do hereby certify that on this 2nd day of March, 2000, copies of the attached document were served by first-class mail on the following party:

Anne F. La Lena
MCI WorldCom, Inc.
1801 Pennsylvania Ave., N.W.
Washington, DC 20006


Rosalyn Bethke